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DE RUEHIL #3779/01 2411239

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FM AMEMBASSY ISLAMABAD

TO RUEHC/SECSTATE WASHDC PRIORITY 1396
INFO RUEHKA/AMEMBASSY DHAKA PRIORITY 2212
RUEHBUL/AMEMBASSY KABUL PRIORITY 7468
RUEHNE/AMEMBASSY NEW DELHI PRIORITY 1654
RUEHKP/AMCONSUL KARACHI PRIORITY 7200
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C O N F I D E N T I A L SECTION 01 OF 02 ISLAMABAD 003779

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E.O. 12958: DECL: 08/29/2017

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SUBJECT: PAKISTAN SUPREME COURT: INCREASING CHALLENGES TO MUSHARRAF

REF: ISLAMABAD 3706

Classified By: Anne W. Patterson, reasons 1.4 (b), (d)

¶1. (C) Summary: President Musharraf's troubles with the Supreme Court are multiplying even as his negotiations with Pakistan People's Party leader Benazir Bhutto intensify. On August 28, the Court agreed to hear two cases challenging Musharraf's right to seek re-election in uniform. The newly empowered Court is calling top government officials to report on the Red Mosque military operation and is moving forward on cases filed on behalf of "disappeared" citizens allegedly arrested by the intelligence services. Frustrated citizens and even North Waziristan militants are turning to the Court for judicial relief. However, the court has yet to take a major decision to directly curb Musharraf or the military's power. The pending cases will put additional pressure on Musharraf to decide if/when he will shed his uniform and show just how far the activist court is willing to go in challenging the government. End Summary.

LAWYERS CHALLENGE THE UNIFORM

¶2. (U) A seven-judge bench of the Supreme Court granted an appeal to review a two-year old verdict which allowed President Musharraf to hold two concurrent offices (President and Chief of Army Staff). The Pakistan Lawyers Forum (PLF) had filed a petition in the Supreme Court in 2005 challenging the uniform, but the verdict had been in favor of President Musharraf. In issuing its decision the Court cited the right of parliament to amend the constitution. On August 28, the newly emboldened Supreme Court granted the PLF's appeal and will hear arguments in 10 days.

¶3. (SBU) The PLF appeal is being led by former justice A.K. Dogar. The appeal also asks the court to restrain Musharraf from seeking re-election by the present assemblies, to stop making deals with any political parties, and to stop acting as the de facto leader of any political party. The PLF is challenging the constitutionality of 17th Amendment and the Legal Framework Order (LFO) which allowed President Musharraf to hold both offices.

RELIGIOUS PARTY CHALLENGES THE UNIFORM

¶4. (U) On August 29, a three-member bench of the Supreme Court decided to finally hear religious party leader Qazi Hussain Ahmed's May 2007 petition challenging President Musharraf's military tenure. The Supreme Court set aside the earlier objections of the court's registrar and has agreed to proceed with the case. Qazi's petition claims that under Army Regulations Act, President Musharraf had to retire on April 13, 2005 and that his self-extension of tenure is illegal. The petition also claims that Musharraf's election campaigning violates military regulations.

MILITANTS CHALLENGE ARMY ACTIONS

¶5. (C) The fame of the Supreme Court has spread to the tribal areas as well. Militants from North Waziristan sent a letter to the Chief Justice and to opposition political party leaders appealing for the Supreme Court's intervention in the Federally Administered Tribal Areas (FATA). The militants' letter claims that the Supreme Court is their last hope against President Musharraf and the military. They are requesting a legal team headed by the Chief Justice's own famed lawyer Aitzaz Ahsan. The militants want the court to review "unwarranted" military actions in North Waziristan against innocent people. However, the Pakistani constitution is explicit in that the Supreme Court does not have any jurisdiction in the FATA.

MADRASSA BOARD CHALLENGES RED MOSQUE OPERATION

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¶6. (U) Wafaqul Madaris, Pakistan's largest Deobandi madrassa accreditation board, has filed a petition in the Supreme Court challenging the GOP's Red Mosque operation on July 12. In the past the madrassa board helped to represent the government in negotiations with the Red Mosque; now, the board is accusing GOP authorities of defying the agreement to resolve the Red Mosque issue peacefully. On August 28, the Supreme Court directed the Interior Secretary and the Defense Secretary to submit detailed statements within four weeks

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justifying the operation and explaining what one justice described as "the killing of innocent people". Though Wafaqul Madaris' petition also names President Musharraf and the 10th Corps Commander, the court has not ordered either of them to appear.

THE "DISAPPEARED"

¶7. (C) Even before the reinstatement of the Chief Justice, the Court had been investigating cases of "disappeared" citizens allegedly arrested by the intelligence services. On August 20, the Chief Justice summoned the Director General of the Federal Investigating Agency (FIA) to testify and threatened jail time if he could not produce a specific missing person. The individual was released the next day. Human rights lawyers representing the families of the disappeared are pressing forward to demand the release of those arrested and in at least one case are seeking civil redress.

¶8. (C) Comment: In a nation where many people feel that they are disempowered by corruption, lack of law and order, and secretive intelligence agencies, the Supreme Court has

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emerged as a rallying point for justice. The Chief Justice recently observed that the Court was receiving more than 600 petitions and applications daily. Politicians, religious

leaders, human rights activists, and now militants, are seeking the Court's assistance in addressing their grievances.

19. (C) The Supreme Court so far has been bold in inviting a variety of cases, and to some extent has been proactive in calling government officials to task. However, the court has yet to directly challenge the power of President Musharraf, the intelligence agencies, or the military. The decisions in these pending cases will greatly affect the upcoming presidential and general elections and will be test of the court's will. End Comment.

PATTERSON